

FREEDOM COURT REPORTING

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:05cv622-d

MARY BLOODSWORTH and

JERRY BLOODSWORTH,

PLAINTIFF(S),

VS.

SMITH & NEPHEW, et al.,

DEFENDANT(S).

COPY

DEPOSITION OF
JAMES DONALD LANIER
January 13, 2006

S T I P U L A T I O N

IT IS STIPULATED AND AGREED, by and
between the parties through their
respective counsel, that the deposition of
JAMES DONALD LANIER may be taken before
Kerry K. Thames, Commissioner, at 2900

**367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660**

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1 AmSouth-Harbert Plaza, Birmingham, Alabama,
2 on January 13, 2006, commencing at 9:05
3 A.M.

4 IT IS FURTHER STIPULATED AND AGREED
5 that the signature to and reading of the
6 deposition by the witness is waived, said
7 deposition to have the same force and
8 effect as if full compliance had been had
9 with all laws and rules of court relating
10 to the taking of depositions.

11 IT IS FURTHER STIPULATED AND AGREED
12 that it shall not be necessary for any
13 objections to be made by counsel to any
14 questions except as to form or leading
15 questions, and that counsel for the parties
16 may make objections and assign grounds at
17 the time of the trial, or at the time said
18 deposition is offered in evidence, or prior
19 thereto.

20 IT IS FURTHER STIPULATED AND AGREED
21 that notice of filing of deposition by
22 commissioner is waived.

23

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EXAMINATION BY:

PAGE NO.

Mr. Dutton

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EXHIBITS

Plaintiff's Exhibit:

No. 1

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APPEARANCES

FOR THE PLAINTIFF(S):

Mr. Tom Dutton

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Birmingham, Alabama 35203

FOR THE DEFENDANT(S):

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1 I, Kerry K. Thames, acting as
2 Commissioner, certify that on this date as
3 provided by the Federal Rules of Civil
4 Procedure, and the foregoing stipulation of
5 counsel, there came before me JAMES DONALD
6 LANIER, witness in the above cause, for
7 oral examination, whereupon the following
8 proceedings were had:

9
10 JAMES DONALD LANIER,
11 being first duly sworn, was examined and
12 testified as follows:

13
14 THE COURT REPORTER: Usual
15 stipulations?

16 MR. POPE: That's fine.

17
18 EXAMINATION BY MR. DUTTON:

19 Q. Your name is what, please, sir?

20 A. James Donald Lanier,
21 L-a-n-i-e-r.

22 Q. Your residence address is what,
23 please?

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1 A. 3542 Royal Carriage Drive in
2 Montgomery, Alabama.

3 Q. How long have you lived in
4 Montgomery, Alabama?

5 A. Pretty much all my life.

6 Q. Continuously during the last
7 five years?

8 A. Yes.

9 Q. Your business address, is it
10 the same as your office address or not?

11 A. It's the same as my home
12 address.

13 Q. You knew what I was trying to
14 ask you. Thank you. You know Dr.
15 Hodurski?

16 A. I do.

17 Q. Do you still work with his
18 group?

19 MR. POPE: Object to the form
20 of the question. You can answer.

21 A. I still deal with the doctors
22 in that group. I do.

23 Q. (BY MR. DUTTON) Okay. Since

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1 when have you dealt with the doctors in
2 that group, about?

3 A. For how long have I been --

4 Q. Yeah, yeah.

5 A. About -- well, close to twenty
6 years.

7 Q. Regarding the product that
8 we're here about, about when did it come to
9 market?

10 MR. POPE: I don't know which
11 -- which product?

12 MR. DUTTON: The prosthetic hip
13 that was implanted in --

14 MR. POPE: And I'm not trying
15 to be a wiseacre, because there's -- she
16 had the two surgeries with Dr. Hodurski
17 where different devices were implanted,
18 so --

19 MR. DUTTON: Okay.

20 Q. (BY MR. DUTTON) Well, let's
21 get -- you tell me what we call what.

22 A. Well, if you're referring to
23 the constraining liner, the constraining

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1 liner is -- I'm not really sure when that
2 came on the market. It was sometime -- or
3 at least sometime around the same period of
4 time that she had her initial surgery, but
5 I don't know any dates. I don't remember
6 specifics.

7 Q. Okay. Is that the constraining
8 liner and ring? Is that what you're -- is
9 that part of the same thing?

10 A. The constraining liner and the
11 ring are all part of one unit. That's
12 correct.

13 Q. Okay. And what do you call
14 what was implanted at the time of the
15 original surgery?

16 A. The original surgery, where she
17 had her original total hip replacement --

18 Q. Yes, sir.

19 A. -- the primary is what we would
20 call it, that would be the Echelon femoral
21 component and the acetabular component is a
22 Reflection acetabular cup.

23 Q. Okay.

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1 MR. POPE: What about the head?

2 A. Well, the head is just --
3 that's -- the femoral head, I mean, the
4 Smith & Nephew femoral heads are
5 interchangeable with all of our systems.

6 Q. (BY MR. DUTTON) The primary
7 unit, did you refer to it as the Echelon
8 unit?

9 A. The femoral component would be
10 an Echelon -- part of the Echelon system.

11 Q. Okay. And the other component
12 was part of the same or a different system?

13 A. It was a different system
14 because in orthopedics they have the
15 femoral components, which is the whole
16 system by itself, and you have the
17 acetabular components, which is a another
18 system which we call Reflection.

19 Q. So the acetabular component was
20 called Reflection?

21 A. Reflection.

22 Q. And the femoral was Echelon?

23 A. Correct.

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1 Q. About when did the Reflection
2 system come to market?

3 A. You know, I really can't tell
4 you. It's been on the market, oh, ten,
5 fifteen years. It's been, you know, the
6 initial cups in that system, around ten or
7 fifteen years ago. It's been a long time.

8 Q. Okay. Same question with
9 regard to the Echelon femoral system?

10 A. Echelon, probably not as long.
11 Probably ten -- let me think -- maybe ten
12 years. I don't -- once again, I don't
13 remember exactly. I'm saying at least ten
14 years.

15 Q. Okay. I was asking you for
16 your judgment, and you're giving me your
17 judgment. I'm --

18 A. Yeah, that's not -- that's not
19 exact certainly.

20 Q. Okay. At the time of the
21 original procedure, July '03 sound right --
22 June '03?

23 MR. POPE: June.

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1 MR. DUTTON: Yeah, June 2nd,
2 '03, I believe.

3 Q. (BY MR. DUTTON) Both systems,
4 then, had been on the market, in your
5 judgment, greater than five years?

6 A. Yes.

7 Q. The constraining liner and
8 ring supplements which or both -- which of
9 these systems, or does it supplement both
10 of them?

11 A. When you say supplement, it --
12 it would be used with the acetabular side,
13 okay.

14 Q. Okay. And I may have already
15 asked you this, and if I have, I apologize,
16 but about when was the constraining liner
17 and ring system -- when did it go to
18 market?

19 A. Once again, sometime around the
20 same period of her initial primary surgery,
21 but I don't remember exactly the date. I
22 don't know.

23 Q. Okay, but in close proximity to

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1 the time of -- we were talking about, June
2 '03?

3 A. Sometime around there, give or
4 take six months or so. I don't know
5 exactly.

6 Q. Okay. Was it available at the
7 time of the original surgery?

8 MR. POPE: Object to the form
9 of the question.

10 A. I really don't know. I mean,
11 it's -- I can't tell you for sure.

12 Q. (BY MR. DUTTON) You could have
13 told me for sure had I asked you that
14 question, say, on June 1st, 2003, true?

15 MR. POPE: Object to the form.

16 A. I don't know.

17 Q. (BY MR. DUTTON) You could
18 have, had you not known it, you could have
19 obtained the answer to that question, true?

20 A. All right, give me the date
21 again. Say again --

22 Q. June 1st, '03.

23 A. So that's when we did the

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1 original surgery?

2 MR. POPE: Right --

3 Q. (BY MR. DUTTON) That's the day
4 before the original surgery was done.

5 MR. POPE: -- yeah.

6 A. You're asking me did I know at
7 that time whether the cup was available or
8 not?

9 Q. (BY MR. DUTTON) Yeah.

10 A. Once again, I don't know
11 because I had no reason to know. It very
12 well could have been, but I don't remember.

13 Q. How could you -- you could have
14 obtained the answer to that question?

15 A. I could have --

16 Q. Right.

17 A. -- had I needed to.

18 Q. How would you have gone about
19 obtaining the answer to that question?

20 A. If I needed to know if a
21 product is available, then I would just
22 simply call marketing and ask them, you
23 know, is this -- is this product in

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1 question available for market, if I didn't
2 know at that time.

3 Q. Did you assume -- well, let me
4 back up. I'm taking away that partial
5 question. I'm going to start over.

6 What is the utility of what
7 you're calling the constraining liner and
8 ring?

9 A. When you say the utility, what
10 do you mean by utility?

11 Q. Use.

12 A. Indication, is that what you're
13 meaning, what is the indication for that
14 liner?

15 Q. We can go with that, yeah.

16 A. The indication for that liner
17 would be --

18 Q. Yeah, that's fine.

19 A. -- if the surgeon so chooses,
20 if he has a situation and a -- resulting
21 from a previous surgery that he feels like
22 there's a need for a constraining liner,
23 that nothing -- that's what's in there at

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1 the present time is unstable and he needs
2 to do something to revise it, if he feels
3 like the situation requires a constraining
4 liner, then that's -- that's what the
5 indication would be.

6 Q. Does it -- is its purpose to
7 provide stability and to decrease the
8 chance of dislocation of the primary unit?

9 A. That would be the -- that would
10 be a purpose of it, yes.

11 Q. Any other purpose?

12 A. No.

13 Q. Constraining liners and rings
14 are used, and I'll save you from having to
15 repeat it, when in the physician's judgment
16 they can decrease the likelihood of further
17 dislocations and make the prosthetic joint
18 more stable?

19 A. Correct.

20 Q. And that is, to your
21 observation, a less extensive operation,
22 that is, adding a constraining liner and
23 ring to the original prosthesis, than a

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1 complete redo of the primary procedure?

2 MR. POPE: Object to the form
3 of the question. Go ahead.

4 A. It could be. It could be a
5 very -- it could be a -- what you just
6 stated, yes.

7 Q. (BY MR. DUTTON) Did the
8 constraining liner and ring that we're
9 talking about, did it have a system name
10 such as Reflection or Echelon or whatever
11 it was?

12 A. It's in the Reflection system,
13 it is.

14 Q. Okay, thanks. How would, with
15 reference to the Echelon and Reflection
16 systems which were implanted in Mary on the
17 2nd of June of '03, how was the order --
18 how would the order have been placed and
19 filled, and what was your involvement in
20 that if there was any?

21 A. For the primary hip?

22 Q. Yes, sir, that's right.

23 A. Okay. The standard procedure

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1 for that is the doctor will schedule a
2 surgery. Either -- I would check his
3 schedule, the surgery schedule book, and
4 determine then when the surgery was
5 scheduled because I know that he's going to
6 use my system. At that point in time, I
7 would just simply ensure that everything is
8 at the hospital as needed and provide -- of
9 course, the instruments at this particular
10 hospital and the implants stay there, so I
11 just make the sure the inventory and
12 instruments are provided for the surgery.

13 And once the procedure is done,
14 then we would issue a bill only statement
15 to the -- or a bill only statement to the
16 hospital, where they, in turn, are invoiced
17 with a PO number from Smith & Nephew for
18 the purchase of the items.

19 Q. Prior to the Reflection
20 constraining liner and ring becoming
21 available, and you're not saying it was
22 available at the time of the original
23 surgery, are you?

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1 A. I stated I did not know at the
2 time.

3 Q. You know it wasn't now, do you
4 not?

5 MR. POPE: Object to the form
6 of the question -- yeah, object to the form
7 of the question.

8 Q. (BY MR. DUTTON) You may
9 answer.

10 MR. POPE: You may answer.

11 A. I know now that it was not
12 available at that particular time?

13 Q. (BY MR. DUTTON) Yes, sir.

14 A. No, I don't know that.

15 Q. If I asked you that question
16 with respect to a size 52, would you answer
17 that question differently?

18 A. All right, let me back up. Let
19 me -- okay. I do -- I've got to recount
20 (sic) my statement, okay --

21 Q. Okay, sure.

22 A. -- I'm going to answer because
23 at the time of her surgery, her initial

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1 surgery, I -- I think I did know that that
2 system was available, yes.

3 Q. You knew the system was
4 available --

5 A. Yes.

6 Q. -- did you know the size was
7 available?

8 A. I did not know the size that we
9 needed at that time.

10 Q. Okay.

11 A. So I don't know, then, that the
12 one that she needed was available because I
13 did not know what size she would have.

14 Q. If she had a -- well, would --
15 would the primary unit have been ordered by
16 size?

17 A. The primary system?

18 Q. Yes, sir.

19 A. No.

20 Q. Okay. How does that work?

21 A. Well, because you don't know
22 until you get into surgery what size is
23 going to be required, so I carry every size

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1 available into surgery.

2 Q. So you have every size
3 available available to the surgeon at the
4 time of surgery?

5 A. I do.

6 Q. And that's a decision generally
7 made, if not universally made, by the
8 surgeon at the time of surgery, in your
9 experience?

10 A. That's correct, yes.

11 Q. Okay.

12 MR. POPE: Which size to
13 individually use?

14 MR. DUTTON: Yeah.

15 MR. POPE: Okay, I just wanted
16 to make sure.

17 Q. (BY MR. DUTTON) And are you
18 saying that you knew that at the time of
19 the original surgery that all sizes of the
20 Reflection constraining liner and ring were
21 available?

22 A. I knew at the time of her
23 original surgery that the Reflection

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1 constraining liner was available. As far
2 as -- and I probably knew at that time the
3 sizes that were available.

4 Q. What if anything would you have
5 communicated to Dr. Hodurski at the time of
6 the original surgery with respect to the
7 availability or not of Reflection
8 constraining liners and rings?

9 A. Is that the question --

10 Q. Yes, sir.

11 A. -- are you through? All right.
12 At the time of the original surgery, I
13 would not have had any reason to discuss
14 the constraining liner.

15 Q. So would it be your testimony
16 that you did not discuss anything about
17 constraining liners and rings of the
18 Reflection system with Dr. Hodurski at the
19 time of Mary's original surgery back in
20 June of '03?

21 A. That's correct.

22 Q. Did you communicate with him
23 with respect to size availability of

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1 Reflection constraining liners and rings in
2 any other manner, that is, other than
3 telling him at that time?

4 A. No.

5 Q. So it would be your testimony
6 that back in June of '03, at the time of
7 Mary's original surgery, you communicated
8 nothing to Dr. Hodurski about the
9 availability by size of Reflection
10 constraining liners and rings?

11 A. Correct.

12 Q. Did the Reflection constraining
13 liner and ring replace any other
14 constraining liner and ring system which
15 had previously been used with the
16 acetabular system, the Reflection
17 acetabular system?

18 A. No.

19 Q. Had you received any premarket
20 training about the Reflection constraining
21 liner and ring?

22 A. No.

23 Q. No prelaunch training or

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1 anything of that nature?

2 A. Not -- not formal training, no.

3 Q. How would Smith & Nephew have
4 advised you that it was coming to market?

5 A. They would have sent out
6 correspondence from the company describing
7 the product, along with the use of the
8 product, how it's to be used in surgery,
9 along with sizes, technique of the
10 assembly, and things such as that.

11 Q. Along with sizes and technique
12 of assembly?

13 A. Uh-huh (Nodding head).

14 Q. Okay. Would that be in the
15 form of both sales training material and in
16 the form of materials to be shared with the
17 operating physicians?

18 MR. POPE: Object to the form
19 of the question. You can answer if you
20 understand what he's talking about.

21 A. The -- there really was -- the
22 only sales plan, like I said, was not
23 really a formal sales training. It was

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1 simply correspondence that comes for
2 in-office use only, not to be disclosed
3 to a surgeon or to, you know, any other
4 person --

5 Q. (BY MR. DUTTON) Right.

6 A. -- the -- so, other than that,
7 that's all the sales material that comes to
8 me as far as training. And then what --
9 there was probably, at some time, there was
10 a technique, interim technique, that was
11 issued for the surgeons so that they would
12 have some information that they could look
13 at as to how the product is used and put
14 together in surgery.

15 Q. Okay. In your organization, is
16 the sales training material which is not to
17 be shared, and for your eyes only so to
18 speak, is it so stamped? Is there any kind
19 of stamp --

20 A. It is.

21 Q. Okay. And what is your
22 company's -- how does it read?

23 MR. POPE: Well, I --

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1 A. It says -- I don't know
2 exactly, just says do not disclose to -- do
3 not allow surgeons to read this material,
4 basically. I don't -- the exact wording of
5 it, I don't know, but that's basically what
6 it's saying.

7 Q. (BY MR. DUTTON) You've seen it
8 so many times, you know what it means, but
9 you don't know what it says?

10 A. Yeah, I know it's going to say
11 it at the bottom of the letter, so I . . .

12 Q. Okay. And did you also receive
13 stuff, materials, to share with the
14 surgeon?

15 A. I did have an interim technique
16 of a sort to let him have so he would have
17 some information for his own use.

18 Q. Okay, and describe this
19 technique document -- was it a document,
20 first of all?

21 A. It was -- yeah, I guess you
22 would call it a document.

23 Q. Was it hard copy is what I

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1 mean?

2 A. It was photocopies, I believe,
3 I'm not sure, I think it was a photocopy of
4 a brochure that would be released in the
5 future, and that's what he had for his
6 personal use.

7 Q. Okay. And what was the
8 distribution schedule for that document?

9 A. What do you mean distribution
10 schedule?

11 Q. Well, did you go give one to
12 all of your customers --

13 A. No.

14 Q. -- as soon as it became
15 available?

16 A. No.

17 Q. You gave it to them when they
18 needed --

19 MR. POPE: If you remember.

20 Q. (BY MR. DUTTON) -- to use one,
21 when they decided they needed to use --

22 A. That's -- the only -- yeah, if
23 a doctor requests information, I give it to

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1 him.

2 Q. Yeah. Well, if he requested
3 the constraining liner and ring, you would
4 give it to him, in other words, if he
5 ordered one?

6 A. Yes.

7 Q. Yeah. You distributed no
8 document to Dr. Hodurski or anyone in his
9 group as of June 2, '03, with respect to
10 size availability of the Reflection
11 constraining liner and ring, true?

12 A. That may not be true.

13 Q. Is it untrue?

14 A. That would be untrue. I think
15 I did, prior to her original surgery, had
16 given Dr. Hodurski a form of the technique.

17 Q. Which is the document you
18 described for me --

19 A. Uh-huh (Nodding head).

20 Q. -- the xeroxed document you
21 described for me a few minutes ago?

22 A. Yes.

23 Q. Did that document have any

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1 information with respect to size
2 availability?

3 A. Yes, I think it did.

4 Q. Do you still have that document
5 or a copy of that?

6 A. No, I don't.

7 Q. Who did you get it from?

8 A. It would have come from Smith &
9 Nephew.

10 Q. Who? From -- who in Smith &
11 Nephew would have distributed it to you?

12 A. Well, most likely hip
13 marketing --

14 Q. Okay.

15 A. -- total hip marketing.

16 Q. If I wanted to ask your company
17 if they could find me a copy of that
18 document, what would I name that document?

19 MR. POPE: Object to the form
20 of the question just to the extent that
21 you're referring to his company as Smith &
22 Nephew, but that's just --

23 MR. DUTTON: Okay.

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1 MR. POPE: Go ahead and answer
2 the question.

3 A. There again, I would simply
4 call total hip marketing at Smith & Nephew.

5 Q. (BY MR. DUTTON) And ask for
6 what?

7 A. And ask for -- you could ask
8 them for the interim technique for the
9 Reflection constraining liner that was
10 initially released prior to -- or at the
11 time of the release of the product.

12 Q. Are you an employee of Smith &
13 Nephew?

14 A. No.

15 Q. What's your relationship with
16 them, to your understanding?

17 A. Well, I work under a contract
18 -- under a corporation which is Lanier
19 Orthopedics, which is an independent
20 contractor with Smith & Nephew.

21 Q. How long has that been true?

22 A. The company made changes around
23 the --

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1 MR. POPE: Tell him -- when you
2 say the company, just --

3 A. Smith & Nephew was -- I think
4 in 2001 they went direct, I think somewhere
5 around 2001 when they actually -- I've been
6 with the company as an independent rep or
7 independent contractor for nearly twenty
8 years, but the company actually went direct
9 with the distributorships that were
10 initially in place. So the corporation
11 went under Smith & Nephew around 2001 as an
12 independent contractor directly with Smith
13 & Nephew.

14 Q. (BY MR. DUTTON) Whereas before
15 the relationship had been with the
16 distributor?

17 A. That's correct.

18 Q. With -- was it Spar?

19 A. Spar Medical, yes.

20 Q. But you were operating as an
21 independent contractor by the name of
22 Lanier Orthopedics?

23 A. Uh-huh (Nodding head).

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1 Q. On June 2nd of '03?

2 A. Yes.

3 Q. When you say independent
4 contractor, is there a written agreement
5 between your company -- are you the sole
6 owner of Lanier Orthopedics?

7 A. Yes.

8 Q. Is there a written contract
9 between Lanier Orthopedics and Smith &
10 Nephew?

11 A. Yes.

12 Q. And was there one back in June
13 of '03?

14 A. Yes.

15 Q. Is it the same one?

16 A. Yes.

17 Q. Do you recollect discussions
18 with Dr. Hodurski in December or January of
19 -- December '03, January of '04, with
20 respect to a constraining liner and ring of
21 the reflection variety with reference to
22 Mary Bloodsworth?

23 A. Are we talking about after the

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1 primary surgery?

2 Q. Yes, sir, we're talking --

3 A. After the --

4 Q. -- about after the -- during
5 the course following that surgery, there
6 were several dislocations, and there came a
7 time in December of '03 or January of '04
8 where the doctor wanted to try a
9 constraining liner and ring.

10 A. Uh-huh (Nodding head).

11 Q. That's the time I'm talking
12 about. Did you and he have discussions
13 about that?

14 A. Yes, we did.

15 Q. Would that have been -- best
16 judgment, was that in late December or
17 early January, or do you remember?

18 A. I don't remember.

19 Q. Does that time frame sound
20 about right, or do you remember?

21 A. All I remember as far as time
22 line would be that he and I discussed this
23 when he determined that he wanted to do the

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1 revision, whatever time that was.

2 Q. Okay. And so if the hospital
3 records indicate that it was originally
4 scheduled for early January of '04, then
5 your best judgment would be the
6 conversation would have been around that
7 time?

8 A. Yes.

9 Q. Tell me what you remember to
10 have been the substance of the
11 conversation, specifically what Dr. Donald
12 Hodurski said to you and what you said to
13 Dr. Hodurski?

14 A. Well, about all I remember was
15 that due to the frequency or the number of
16 dislocations that she had had, he would
17 like to consider doing a revision total hip
18 on Ms. Bloodsworth.

19 Q. Okay. And what did you say to
20 him?

21 A. Nothing to say. Okay.

22 Q. Do you remember there being a
23 delay in your ability to obtain a size 52

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1 Reflection constraining liner and ring?

2 A. There was a delay.

3 Q. And the reason for that delay?

4 A. The reason for the delay was
5 that that particular size was not available
6 on -- it was in the process of being
7 produced, but the availability at that time
8 was not there.

9 Q. Had the company run out of
10 them, or had they not --

11 A. No.

12 Q. -- come to market with a size
13 52? And by as far as come to market, they
14 didn't have any available for distribution
15 at that time in January?

16 A. The inventory on the
17 constraining liners was a limited inventory
18 on initial release, which means for the
19 extremely smaller sizes or the larger
20 sizes, they had not come to market yet.

21 Q. Okay. Did the size 52 -- does
22 that ring true that we're dealing with a
23 size 52?

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1 A. I don't remember the exact
2 sizes.

3 Q. Okay, the -- well, okay. The
4 size 52, is that, on either end, is that
5 relatively large or relatively small in the
6 context of your last answer?

7 A. Size 52 is on the small side,
8 but it's not an odd size, but it -- it's
9 just -- if, in fact, that was the size she
10 has in, I don't remember, whatever size she
11 had in was on the small side because we did
12 not have that size available.

13 Q. Well, you would have -- then
14 you communicated that to Hodurski, would
15 you have not?

16 A. I communicated that to him when
17 I had to go back and determine what size
18 she had in place. I did not have that to
19 memory at the time we scheduled the case.

20 Q. Sure. Okay. And when you
21 checked you found that it had not come to
22 market yet, but was it in the process of
23 coming to market?

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1 A. It was.

2 Q. And you got an ETA?

3 A. I did.

4 Q. And that ETA was about a month
5 away from the originally scheduled
6 constraining liner and ring surgery?

7 MR. POPE: Object to the form
8 of the question.

9 A. Somewhere around there. I
10 don't remember the exact period of time.
11 Three to four weeks, something along that
12 line. We did have an ETA, though.

13 Q. (BY MR. DUTTON) Okay. Do you
14 remember Dr. Hodurski telling you he would
15 not have installed the, whatever size it
16 was, system had he known at the time, that
17 is, June '03, that a constraining liner and
18 ring to supplement it, if necessary, was
19 unavailable?

20 A. No.

21 Q. Are you saying he did not tell
22 you that?

23 A. He did not make that statement.

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1 (Whereupon, an off-the-record
2 discussion was had).

3 (Recess from 9:39 A.M. until
4 9:44 A.M.)

5 Q. (BY MR. DUTTON) I can't read
6 my own writing, so I'm going to have to ask
7 you this again, sir, or I want to make sure
8 that I can. Did you say if I were to ask
9 -- want to get the xerox-copied material
10 that you would have given Dr. Hodurski back
11 at the time of the original surgery, I
12 would ask Smith & Nephew for the interim
13 technique that was released at about the
14 time the Reflection constraining liner and
15 ring was first released?

16 A. Yes.

17 Q. You're aware that physicians,
18 surgeons, in your line of effort, they rely
19 on information you give them?

20 MR. POPE: Object to the form
21 of the question.

22 A. In regards to?

23 Q. (BY MR. DUTTON) Say, with

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1 respect to the interim technique that you
2 said you gave Dr. Hodurski.

3 A. They use the documentation that
4 we provide for them to give them
5 information about the products.

6 Q. That's what you're there for,
7 isn't it, I mean, true?

8 A. To give them information,
9 that's right.

10 Q. And you would expect them to
11 rely on it, would you not?

12 MR. POPE: Object to the form
13 of the question.

14 Q. (BY MR. DUTTON) You may
15 answer.

16 A. I would expect them to use the
17 information that I give them.

18 Q. You don't expect them to rely
19 on that information, or are we saying the
20 same thing?

21 MR. POPE: Object to the form
22 of the question. I think he said what he
23 expects them to do with it, but go ahead

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1 and tell him again.

2 A. When you say I expect them to
3 do that --

4 Q. (BY MR. DUTTON) Yeah.

5 A. -- I provide information for
6 them to use, and whether or not they use
7 it, that's their call. If they want to use
8 my system, I make sure that they have the
9 information in hand that describes the
10 system so that they're not in the dark
11 about how the system works.

12 Q. And you --

13 A. Now, if they don't read it,
14 that's their call.

15 Q. It would not surprise you if
16 they were to rely on it?

17 MR. BARTON: Object to the
18 form.

19 MR. POPE: Object to the form
20 of the question.

21 Q. (BY MR. DUTTON) True?

22 A. It would not surprise me if
23 they relied on the information.

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1 Q. Day in and day out you see
2 them doing so, don't you?

3 MR. POPE: Object to the form
4 of the question.

5 A. Day in and day out?

6 Q. (BY MR. DUTTON) Yes, sir.

7 A. Not necessarily.

8 Q. Routinely you see them doing
9 so, don't you?

10 MR. POPE: Object to the form
11 of the question.

12 A. No.

13 Q. (BY MR. DUTTON) They ignore --
14 routinely they ignore the information you
15 give them? Is that what you're saying?

16 A. No, they don't ignore it.

17 Q. They use it, don't they?

18 A. How do you mean they use it? I
19 mean, what are you -- in a procedure?

20 Q. Yeah.

21 A. Are you saying in a surgical
22 procedure, they're using the information --

23 Q. Or prior thereto -- I didn't

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1 mean to interrupt. I wasn't trying to be
2 rude.

3 A. No, I'm saying in a surgical
4 procedure, as they're inserting these
5 implants, they're using the technique that
6 is provided for them from the company.

7 MR. POPE: Tell him what you
8 mean -- who's the company?

9 A. I'm sorry, Smith & Nephew.

10 Q. (BY MR. DUTTON) Do you know of
11 any information you communicated to Dr.
12 Hodurski about the -- either the Echelon
13 femoral, the Reflection acetabular, or the
14 Reflection constraining liner and ring
15 systems upon which he did not rely?

16 MR. POPE: Object to the form
17 of the question.

18 A. All right, let's take it one
19 step at a time.

20 Q. (BY MR. DUTTON) Sure.

21 A. Do I remember providing the
22 information for the Echelon -- say that --

23 Q. Okay, I'll repeat --

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1 A. You had three questions in one,
2 actually, so --

3 Q. Okay. Your lawyer is supposed
4 to make that objection.

5 MR. POPE: I did.

6 Q. (BY MR. DUTTON) Do you
7 remember providing Dr. Hodurski any
8 information about the Reflection
9 constraining liner and ring upon which he
10 did not rely?

11 MR. POPE: Object to the form
12 of the question.

13 A. No, I don't remember.

14 Q. (BY MR. DUTTON) Okay. If I
15 asked you the same question with the
16 Reflection acetabular system, would your
17 answer be the same?

18 MR. POPE: Same objection.

19 A. I don't remember when I
20 provided information to him about
21 Reflection.

22 Q. (BY MR. DUTTON) Okay, so do
23 you remember providing him any information

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1 about the Reflection acetabular system upon
2 which he did not rely?

3 MR. POPE: Object to the form
4 of the question.

5 A. I don't remember providing him
6 with information on the Reflection, period,
7 whether he did or did not rely on it.

8 Q. (BY MR. DUTTON) Well, that's
9 -- I could ask you the same question the
10 other way. I choose to ask it in a
11 particular way, and that's why I'm wanting
12 an answer to my question. I'm not fussing
13 at you.

14 Do you remember providing him
15 any information about the acetabular
16 Reflection system upon which he did not
17 rely?

18 MR. POPE: Object to the form
19 of the question.

20 A. No.

21 Q. (BY MR. DUTTON) If I asked you
22 the same question about the Echelon system,
23 would your answer be the same?

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1 MR. POPE: Same objection. Go
2 ahead if you understand what he's asking.
3 I'm just giving my --

4 A. I don't remember.

5 Q. (BY MR. DUTTON) Okay.

6 A. I don't.

7 Q. Did your company offer any
8 other acetabular components other than the
9 Reflection system back at the time we're
10 talking about?

11 MR. POPE: Lanier or Smith &
12 Nephew?

13 MR. DUTTON: Excuse me, Smith &
14 Nephew.

15 MR. POPE: Well, I didn't know
16 if you --

17 MR. DUTTON: Thank you.

18 MR. POPE: He might be
19 distributing other stuff.

20 MR. DUTTON: Thank you.

21 A. That's -- no. The Reflection
22 system was the only acetabular system that
23 Smith & Nephew had at that time.

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1 Q. (BY MR. DUTTON) Its
2 predecessor system was named what, if you
3 remember?

4 A. The system prior to Reflection
5 was called Optifix.

6 Q. Was there a constraining liner
7 and ring system that accompanied the
8 Optifix system?

9 A. No.

10 Q. What prompted the company to
11 make available the constraining liner and
12 ring, that you know of, the company being
13 Smith & Nephew?

14 A. The only -- I could not offer
15 -- answer that because that would just be
16 conjecture. I don't know. You would have
17 to ask the engineers.

18 Q. I'm not asking you to guess,
19 I'm asking you if you heard anything?

20 A. I have not heard anything.

21 Q. Have you heard anything in the
22 nature of the Smith & Nephew systems are
23 dislocating too much and we're coming up

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1 with this to try to fix the problem?

2 A. No.

3 MR. DUTTON: Anything else,
4 boys?

5 MR. POPE: (Shaking head).

6 MR. DUTTON: Sir, thank you for
7 your time.

8 (Whereupon, an off-the-record
9 discussion was had).

10 MR. DUTTON: I do -- wait a
11 minute. One thing before I get -- I'm not
12 through.

13
14 (Whereupon, Plaintiff's Exhibit
15 Number 1 was marked for identification and
16 copy of same is attached hereto).

17
18 Q. (BY MR. DUTTON) Exhibit 1,
19 sir, is a response to the notice of
20 deposition. I don't even know if you've
21 seen it or not, and it's not -- that's
22 really not my point.

23 MR. POPE: That's what we're

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1 talking about (Indicating).

2 MR. DUTTON: Yeah, could you
3 let him look at that one with yours, and
4 I'll look at -- yeah, thanks.

5 Q. (BY MR. DUTTON) Do you report
6 to Smith & Nephew with respect to your
7 contacts with physicians?

8 A. No.

9 Q. So you -- you're familiar with
10 what's referred to in the industry as call
11 notes?

12 A. I am.

13 Q. You don't make them to Smith &
14 Nephew?

15 A. No.

16 Q. And did not make them during
17 the times we've been talking about --

18 A. No.

19 Q. -- this morning with respect to
20 conversations you've had with Dr. Hodurski?

21 A. I did not.

22 Q. Okay. And you've told me about
23 the sales training material you received

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1 about the products we've talked about this
2 morning and the sales materials -- or sales
3 information you communicated to Dr.
4 Hodurski?

5 A. (Nodding head).

6 MR. POPE: You need to
7 verbalize your answer.

8 A. Yes. Yes, I'm sorry.

9 Q. (BY MR. DUTTON) You have no
10 sales materials in your possession?

11 A. No.

12 Q. You have no call notes in your
13 possession?

14 A. No, sir.

15 Q. You have no sales training
16 materials --

17 A. No, sir.

18 Q. -- in your possession?

19 A. I do not.

20 MR. POPE: With respect to
21 these products?

22 MR. DUTTON: The ones we've
23 been talking about.

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1 Q. (BY MR. DUTTON) Why don't you
2 have them with respect to these products?
3 I'm not talking about -- you don't keep
4 sales training materials?

5 A. I do on some products.

6 Q. Okay, but not on these?

7 A. Not on this.

8 Q. Okay. And you have no
9 documents to indicate anything about or
10 reports of any problems with the Reflection
11 systems?

12 A. No.

13 Q. Okay.

14 MR. DUTTON: I offer 1. That's
15 all. I'll say it again, thank you, sir.

16

17 FURTHER THE DEPONENT SAITH NOT

18

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C E R T I F I C A T E

STATE OF ALABAMA:

JEFFERSON COUNTY:

I hereby certify that the above and foregoing deposition was taken down by me in stenotype, and the questions and answers thereto were reduced to typewriting under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing.

I further certify that I am neither of counsel nor kin to the parties to the action, nor am I in any way interested in the result of said cause.


KERRY K. THAMES - COMMISSIONER

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RECD JAN 11 2006

1 - LANIER

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**MARY BLOODSWORTH and
JERRY BLOODSWORTH,**

Plaintiffs,

v.

**SMITH & NEPHEW, INC.,
et al.,**

Defendants.

CASE NUMBER:

2:05cv622-d

OBJECTION TO NOTICE OF TAKING DEPOSITION

Defendant Donnie Lanier ("Lanier"), pursuant to Rules 30(b)(5) and 34(b) of the Federal Rules of Civil Procedure, objects as follows to request for documents contained in plaintiffs' Notice of Taking Deposition of the Defendant, Donnie Lanier:

GENERAL OBJECTIONS

1. Lanier objects to producing any documents at his deposition scheduled for January 13, 2006. The Court's Order of December 19, 2005 ("Order") permits plaintiffs to depose Lanier on the limited topic of his communications with Mary Bloodsworth's physician, Donald F. Hodurski, M.D. ("Dr. Hodurski"); the Order does not permit plaintiffs to request documents from Lanier, nor does it require Lanier to produce documents to plaintiffs.

2. Lanier objects to the request for documents on the grounds that requiring Lanier to produce documents to plaintiffs prior to their responding to defendants' outstanding discovery and prior to their providing their Rule 26 Initial Disclosures will unfairly prejudice Lanier.

3. Lanier objects to the request for documents on the grounds that requiring Lanier to produce documents to plaintiffs prior to their amending their pleadings to comply with Rule 9(b) will unfairly prejudice Lanier.

4. Lanier objects to the request for documents on the grounds that it requests that Lanier respond in a time period shorter than that prescribed by Rule 34.

SPECIFIC OBJECTIONS

1. Lanier objects to this request on the grounds that it exceeds the scope of the Court's Order allowing plaintiffs to depose Lanier about "the nature and extent of Lanier's statements to and communications with Mrs. Bloodsworth's surgeon concerning the products at issue." (Order, p. 22.) Specifically, communications between Lanier and Dr. Hodurski, other than those concerning Mrs. Bloodsworth and the subject products are beyond the scope of the Order. In addition, any communications between Lanier and Kirklin Clinic are beyond the scope of the Order because the subject products were neither prescribed nor implanted at Kirklin Clinic.

Without waiver of those objections, Lanier states that he has no such documents in his possession relating to Mary Bloodsworth or the products that are the subject of this action.

2. Lanier objects to this request on the grounds that it is beyond the scope of the Court's Order permitting plaintiffs to depose Lanier about "the nature and extent of Lanier's statements to and communications with Mrs. Bloodsworth's surgeon concerning the products at issue." (Order, p. 22.) Any "sales training materials" regarding the subject products, to the extent they exist, are in no way relevant to those statements and communications.

Without waiver of that objection, Lanier states that he has no documents in his possession that are responsive to this request.

3. Lanier objects to this request on the grounds that it is beyond the scope of the Court's Order permitting plaintiffs to depose Lanier about "the nature and extent of Lanier's statements to and communications with Mrs. Bloodsworth's surgeon concerning the products at issue." (Order, p. 22.) Any "sales materials" regarding the subject products, to the extent they exist, are in no way relevant to those statements and communications.

4. Lanier objects to this request on the grounds that it is beyond the scope of the Court's Order permitting plaintiffs to depose Lanier about "the nature and extent of Lanier's statements to and communications with Mrs. Bloodsworth's surgeon concerning the products at issue." (Order, p. 22.) Any "reports of problems" with the subject products, to the extent they exist, are in no way relevant to those statements and communications.

Lanier objects to this request to the extent that it requests information protected by federal or state rules, regulations or laws.

Without waiver of those objections, Lanier states that he has no documents in his possession that are responsive to this request.



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OF COUNSEL

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the above and foregoing upon all parties to this cause by hand delivery this the 11 day of January 2006, to the following:

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